

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Pierre Colin, et al.	§	Group Art Unit: 2616
	§	
Serial No.: 10/675,363	§	
	§	Examiner: Ahmed, Salman
Filing Date: September 30, 2003	§	
	§	
Title: Computer Data Transport System and Method	§	Attorney Docket No. 11091

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37 CFR 1.8

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DATE OF SUBMISSION: MARCH 10, 2009
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets.

Respectfully submitted,

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Date: March 10, 2009

Reasons for Review

Claims 1-24 are pending and stand rejected. A Final Office Action issued on December 16, 2008. Applicant responded on February 16, 2009. An Advisory Action issued on February 26, 2009.

1. The Final Office Action's combination of Somekh and Rom does not teach e) generating pause messages at the second gateway based at least in part on the reception of acknowledgement messages by the second gateway or (f) transmitting the pause messages from the second gateway to the first gateway, as required by independent claims 1, 9, and 17.

The Final Office Action rejected claims 1, 3, 4, 6, 8, 9, 11-12, 14, 16, 17, 19, 20, 22, and 24 under 35 USC 103(a) as being unpatentable over United States Patent Publication 2003/0123466 (hereinafter "Somekh") in view of United States Patent No. 6,252,849 (hereinafter "Rom"). Final Office Action at 2.

The instant application involves transferring data between computer systems. Independent claims 1, 9, and 17 require (e) generating pause messages at the second gateway based at least in part on the reception of acknowledgement messages by the second gateway and (f) transmitting the pause messages from the second gateway to the first gateway. The Final Office Action argued that Somekh teaches both of these elements. Final Office Action at 3. In particular, the Final Office Action equated Somekh's Gateway A with the instant claims' first gateway and Somekh's Gateway B with the instant claims' second gateway. The Final Office Action admitted that Somekh does not teach pause messages but argues that element is taught by Rom. Final Office Action at 3.

The Final Office Action made one argument regarding the sequence of events in Somekh that it regarded as teaching elements (e) and (f) of the instant claims. Final Office Action at 3. The Advisory Action changed that argument and identified another sequence of events:

Specifically, Somekh further teaches in figure 9C, paragraph 0227, in some embodiments of the invention, when gateway 36B finally receives packet 312, it transmits a frame 314 with values taken from packet 312. When gateway 36B receives a frame 316 generated responsive to this frame 314, it transmits packet 318 to gateway 36A and transmits response frame to modem 32B.

Clearly, the message flows as follows:

- 1) Modem A sends message 310 to Gateway A,
- 2) Gateway A sends 312 message to Gateway B,
- 3) Gateway B sends 314 to Modem B,
- 4) Modem B responses with message 316 to Gateway B,
- 5) Gateway B responses with 318 to Gateway, and
- 6) Gateway A responses with 322 to Modem A. Advisory Action at 2.

Thus, according to the Advisory Action, Somekh discloses all of the subject matter of elements (e) and (f) of independent claims 1, 9, and 17 except “pause messages,” which the Final Office Action argued is taught by Rom.

Applicant respectfully disagrees. Somekh uses Fig. 9C to describe several different circumstances. The first circumstance, described in Somekh [0226], occurs when “more than a predetermined time passes between the end of the connection establishment negotiation stage on network 34B and gateway 34B did not yet receive packet 312.” The second circumstance, described in Somekh [0227], occurs when “gateway 36B receives packet 312 before the connection establishment negotiation stage on network 34B is completed.” Those two circumstances were the bases of the Final Office Action’s argument regarding elements (e) and (f) of independent claims 1, 9, and 17. Applicant refuted those arguments in its response to the Final Office Action and the Advisory Action did not repeat them.

The Advisory Action relies on a third circumstance, described in Somekh [0227], in which “gateway 36B finally receives packet 312.” The third circumstance occurs when the problem addressed in the first circumstance is corrected by the receipt of packet 312 by gateway 36B. Thus, Somekh [0227] describes the “normal” flow of communications, i.e., one that is not concerned with Somekh’s “connection establishment negotiation stage.” In those circumstances, the pause message required by elements (e) and (f) of independent claims 1, 9, and 17 is not needed, even if such a message is taught by Rom.

Thus, the Final Office Action’s combination of Somekh and Rom does not render independent claims 1, 9, and 17 obvious and those claims are patentable. Claims 3, 4, 6, 8, 11-12, 14, 16, 19, 20, 22, and 24 depend from one of claims 1, 9, and 17 and are patentable for at least the same reasons. Applicant respectfully requests that this rejection be withdrawn.

The Final Office Action rejected claims 2, 7, 10, 15, 18, and 23 under 35 USC 103(a) as being unpatentable over Somekh in view of Rom and further in view of United States Patent Publication No. 2004/0196785 (hereinafter “Janakiraman”). Final Office Action at 12. Applicant respectfully disagrees. Claims 2, 7, 10, 15, 18, and 23 depend from one of independent claims 1, 9, and 17. Applicant has shown that the Final Office Action’s combination of Somekh and Rom is missing elements of independent claims 1, 9, and 17. The Final Office Action’s combination of Somekh and Rom is missing the same elements in claims 2, 7, 10, 15, 18, and 23. The Final Office Action does not argue that Janakiraman provides the missing elements. Therefore, the Final Office Action’s combination of Somekh, Rom and Janakiraman would be missing the same elements. Applicant respectfully requests that this rejection be withdrawn.

The Final Office Action rejected claims 5, 13, and 21 under 35 USC 103(a) as being unpatentable over Somekh in view of Rom and further in view of United States Patent Publication No. 2002/0075873 (hereinafter “Lindhorst-ko”). Final Office Action at 14. Applicant respectfully disagrees. Claims 5, 13, and 21 depend from one of independent claims 1, 9, and 17. Applicant has shown that the Final Office Action’s combination of Somekh and Rom is missing elements of independent claims 1, 9, and 17. The Final Office Action’s combination of Somekh and Rom is missing the same elements of claims 5, 13, and 21. The Final Office Action does not argue that Lindhorst-ko provides the missing elements. Therefore,

the Final Office Action's combination of Somekh, Rom and Lindhorst-ko would be missing the same elements. Applicant respectfully requests that this rejection be withdrawn.